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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JAMIE MORSE, an individual; on behalf of herself and on behalf of all persons similarly situated, Plaintiff, v. MARIE CALLENDER PIE SHOP, INC., a Delaware Company; and Does 1 to 10, Defendant.	CASE NO. 09cv1305 JLS (POR) **AMENDED JOINT MOTION AND STIPULATION FOR PROTECTIVE ORDER** Action Filed: June 15, 2009 Trial Date: None Set
KENNETH CORSINO, RICARDO SANCHEZ, JEREMY SULLIVAN, BENJAMIN MONROY, SCOTT MARTIN, JORGE HERRERA, ANDREA WALKER, individually and on behalf of all others similarly situated, Plaintiffs, v. PERKINS & MARIE CALLENDER'S, INC., MARIE CALLENDER PIE SHOPS, INC., and DOES 1 through 100, inclusive, Defendants.	Action Filed: August 4, 2009 Trial Date: None Set

This Joint Motion and Stipulation is entered into by and between Defendants PERKINS & MARIE CALLENDER'S, INC. and MARIE CALLENDER PIE SHOPS, INC. and Plaintiffs JAMIE MORSE, KENNETH CORSINO, RICARDO SANCHEZ, JEREMY SULLIVAN, BENJAMIN MONROY, SCOTT MARTIN, JORGE

HERRERA and ANDREA WALKER (collectively the "Parties"), based on the fact that discovery in this consolidated case will result in the production and exchange of documents and other information that either constitutes or reveals trade secrets and other highly confidential and/or proprietary business information of Defendants, as well as the production of documents containing sensitive information regarding employees of Defendants.

THEREFORE, the Parties, by and through their respective counsel, HEREBY STIPULATE, AGREE AND APPLY JOINTLY to the Court for entry of a protective order to govern pre-trial proceedings in this action according to the following terms and provisions:

1. This Stipulation and Protective Order shall apply equally to documents, materials, depositions or other testimony, deposition exhibits, interrogatory responses, responses to requests for admissions, and other information (all such materials and information shall be referred to as "Material") produced by the Parties (or third parties) in connection with this case.

2. Any Material that a party believes in good faith contains or comprises any proprietary, commercially sensitive, trade secret information or personal records ("Confidential Material") produced by a party to this litigation or third party in connection with this case ("the Producing Party") may be designated by counsel for the Producing Party as "Confidential" in his/her reasonable and good faith judgment by marking or designating the Material in the manner provided in paragraph 3 of this Stipulated Protective Order. Any Confidential Material that a party believes in good faith to contain highly sensitive information ("Confidential - Attorney Eyes Only") may be designated by counsel for the producing Party as "Confidential – Attorney Eyes Only" information by marking or designating the Material in the manner provided in paragraph 3 of this Stipulated Protective Order. Failure of counsel to designate Material as "Confidential" or "Confidential – Attorney Eyes Only" shall not be deemed a waiver of confidentiality.

3. Any Confidential Material shall be designated "Confidential" or "Confidential – Attorney Eyes Only" by the Producing Party by so stamping the Material with the appropriate legend. Any party producing Confidential Material during or in connection with a deposition may, on the record of the deposition, designate all or portions thereof as "Confidential" or "Confidential – Attorney Eyes Only" under the terms of this Stipulation and Protective Order prior to or during the deposition. Within thirty (30) days after receipt of the deposition transcript, the Producing Party may mark the portions of the deposition transcript as "Confidential" or "Confidential – Attorney Eyes Only" in accordance with the designations made before or during the deposition and shall provide a copy of the marked deposition transcript to all counsel. Only those portions of the transcript of the deposition designated "Confidential" or "Confidential – Attorney Eyes Only" shall be so treated, except that all copies of deposition transcripts that contain designated Material shall be prominently marked "Confidential" or "Confidential – Attorney Eyes Only" on the cover, and when filed with the Court, in whole or in part, shall be lodged conditionally or filed under seal by Order of the Court in accordance with Civil Rule 79.2. For convenience, if a deposition transcript contains repeated references to Confidential Material which cannot be conveniently segregated from non-confidential material, any party may request that the entire transcript be designated "Confidential" or "Confidential – Attorney Eyes Only."

4. Absent a specific order by this Court, and except as provided below, once Material has been designated as "Confidential" or "Confidential – Attorney Eyes Only," it may be used solely in connection with the following actions: *Morse v. Marie Callender Pie Shop, Inc. et al.*, United States District Court for the Southern District of California, Case No. 09-CV-1305 JLS POR, and *Corsino v. Perkins & Marie Callender's Inc.*, United States District Court for the Southern District of California, Case No. 10-CV-00692 TJW (WMC), and shall not be used for any business, proprietary or commercial purpose. Any Confidential Material that is produced shall be produced only to counsel of

record for the parties in this litigation. Counsel for any party who obtains any Confidential Material from any other party shall protect it and its contents from disclosure to anyone other than the persons designated in this paragraph. Counsel of record may disclose Confidential Material where necessary to the proper preparation for and trial of this case to: (i) their employees and employee equivalents (e.g., contract paralegals); (ii) independent experts or consultants retained for the purpose of aiding counsel of record in connection with counsel's preparation for and trial of this case; (iii) witnesses and deponents testifying under oath, where examining counsel has a good faith basis for believing that the witness or deponent has information or testimony pertinent to the Confidential Material; (iv) the named parties to this litigation; and (v) this Court and members of its staff.

5. Before any such Confidential Material, or substance or summary thereof, shall be disclosed to experts or consultants retained by the Plaintiffs or witnesses for Plaintiffs, Plaintiffs are hereby ordered to tender a copy of this Stipulation and Protective Order to each such expert, consultant or witness in order that each such entity or person to whom such disclosure of Confidential Material is made shall be on notice and fully informed that the existence and substance of the Stipulation and Protective Order is, and is intended to be, equally binding upon it, him or her, as well as upon Plaintiffs and their counsel. In addition, those experts, consultants, or witnesses shall sign and abide by the terms of the declaration attached as Exhibit A. Those experts, consultants or witnesses shall not give, show or otherwise divulge any of the Confidential Material to any entity of person except as specifically provided for by this Stipulation and Protective Order.

6. Following the Parties' disclosure of testifying experts and consultants pursuant to FRCP 26, if Defendants determine that Plaintiffs have retained or plan to retain a testifying expert or consultant who currently is employed by or retained as a strategic or business consultant by any entity that is currently or has been at any point a Competitor of Defendants (or their affiliates), Defendants shall

have an opportunity to challenge the disclosure of Confidential Material to the expert or consultant by notifying counsel for Plaintiffs in writing within seven (7) days. A list of Defendants' Competitors is attached hereto as Exhibit B. If Plaintiffs retain a non-testifying expert or consultant that currently is employed by or retained as a strategic or business consultant by any entity that is currently or has been at any point a Competitor of Defendants (or their affiliates), Plaintiffs shall provide written notice to counsel for Defendants of their intention to disclose to such expert or consultant any Confidential Material. Defendants shall have seven (7) days to notify Plaintiffs of any objections they may have to the disclosure of Confidential Material to said expert or consultant. In either scenario, during said seven (7) day period, Plaintiffs shall not disclose Confidential Material to any experts or consultants. In the event that Defendant challenges the disclosure prior to the expiration of the seven (7) day period, Plaintiffs shall be prohibited from disclosing any Confidential Material to such expert or consultant for a period of an additional fourteen (14) days, during which time the Parties will attempt to reach an agreement as to the parameters of such disclosure. If no agreement can be reached, Defendants shall file a motion with the Court within seven days (7) following the expiration of said fourteen (14) day period. Once such a motion has been filed, Plaintiffs shall be prohibited from disclosing any Confidential Material to such expert or consultant without an order of the Court or the written consent of counsel for Defendants. If no such motion is filed within the seven (7) day period, then Plaintiffs may disclose Confidential Material to that expert or consultant provided that he/she complies with the terms of paragraph 5 above.

7. Subject to paragraph 4(iii) above, discovering counsel may show Confidential Material to a witness at a deposition and examine that witness concerning the Confidential Material. Examining counsel may, in the course of the deposition, inquire as to whether the witness agrees to be bound by the terms of this Protective Order. If the witness does not so agree, then neither the witness nor his counsel, if any, may retain or be given any copy of the Confidential Material including, but not limited to, a

copy of any pages of the transcript of the deposition that are designated "Confidential" or "Confidential – Attorney Eyes Only." In the event of such refusal by the witness, the reporter shall be instructed to give the witness written notice when the transcript has been prepared, stating that the witness may inspect the transcript and its exhibits in the reporter's office, and that if the original deposition transcript is not signed within thirty (30) days after the date of the notice, it will be used as if it had been signed. The witness will be permitted to review the deposition transcript and exhibits at the reporter's office but shall not be permitted to retain a copy of portions of the deposition transcript or exhibits that have been designated as "Confidential" or "Confidential – Attorney Eyes Only."

8. Confidential Material may be referred to in interrogatories, interrogatory answers, motions, briefs, or other papers filed with the Court and may be used in depositions, oral arguments in this action and trial, either as exhibits or as the basis for questions. In any motion, brief or other papers filed with the Court referring to Confidential Material, any document a party contends contains Confidential Material shall be lodged with the Court. If any party seeks to have any Confidential Material contained in such filing sealed, that party shall promptly bring a motion under Civil Rule 79.2 to have such Confidential Material sealed. In the event the Court denies the party's motion to seal the Clerk of the Court shall file the papers without being sealed and the Confidential Material will no longer be deemed Confidential in this action.

9. The designation of Material as Confidential shall not be considered conclusive or binding on any party, and such designation may be contested by noticed motion at any time. If at any time during the pendency of this action, counsel for any Party believes that counsel for the another Party has unreasonably claimed that certain Material should be designated as "Confidential" or "Confidential – Attorney Eyes Only," objecting counsel may, after an attempt to meet and confer to resolve the dispute, make an application to this Court, to be lodged conditionally under seal, for an Order that the Material specifically identified by bates stamp, page and/or line

number be excluded from the protection of this Stipulation and Protective Order. However, unless and until an order of this Court sets aside a designation of Material as Confidential, all Material so designated shall be treated as Confidential pursuant to the terms of this Stipulation and Protective Order.

10. If at any time any Material protected by this Protective Order is subpoenaed from the receiving party by any Court, administrative or legislative body, or is requested by any other person or entity purporting to have authority to require the production of such material, the party to whom the subpoena or other request is directed shall immediately give written notice thereof to the Producing Party with respect to Confidential Material sought and shall afford the producing party reasonable opportunity to pursue formal objections to such disclosures.

11. If at any time any privileged Material is inadvertently produced to or received by any Party, the receiving party shall immediately give written notice thereof to the Producing Party and return the Material forthwith. The inadvertent production of such Material shall not be deemed a waiver of claims of privacy or privilege, where the claim is asserted immediately after the production is discovered.

12. The inadvertent failure to designate Material as Confidential does not constitute a waiver of such claim and may be remedied by prompt supplemental written notice at any time, with the effect that such Material will be subject to the protections of this Order from the time it is designated "Confidential" or "Confidential – Attorney Eyes Only." The receiving party shall exercise its best efforts to ensure that copies it makes of Material produced to it, and copies made by others who obtained such Material directly or indirectly from the receiving party, include the appropriate confidentiality legend, to the same extent that the Material has been marked with the appropriate confidentiality legend by the Producing Party.

13. If Confidential Material is disclosed to or comes into the possession of any person other than in the manner authorized in this Stipulated Protective Order, the

party responsible for the disclosure shall take all reasonable steps necessary to prevent further disclosure by each unauthorized person who received Confidential Material.

14. Producing or receiving materials or otherwise complying with the terms of this Stipulation and Protective Order shall not:

a. Prejudice the rights of any Party to object to the production of documents it considers not subject to discovery;

b. Prejudice, limit or affect in any way the privacy rights of any of Defendants' affiliates' current and or former employees or of any of Defendants' current or former employees;

c. Prejudice the rights of any Party to object to the authenticity or admissibility of any document, testimony or evidence subject to this Stipulation and Protective Order;

d. Prejudice the right of any Party to seek this Court's determination whether particular material should be produced or should be subject to the terms of this Stipulation and Protective Order;

e. Prejudice the rights of any Party to apply to this Court for a further protective order relating to any Material; or

f. Prevent the Parties from agreeing in writing to alter or waive the provisions or protections provided for herein with respect to any particular Material and to seek Court approval for such modification, if necessary.

15. This Stipulation and Protective Order has no effect upon, and its scope shall not extend to, any party's use of its own Confidential Material.

16. The provisions of this Stipulation and Protective Order shall, absent written permission of the Producing Party or further order of this Court, continue to apply after the conclusion of this action, including without any limitation any appeals therefrom.

17. Within forty-five (45) days after termination of this litigation, including any appeals therefrom, the originals and all copies of Material designated as

"Confidential" or "Confidential – Attorney Eyes Only" shall, at the direction of the Producing Party, be destroyed or turned over to the Producing Party. Within that same time frame, the parties must jointly bring an ex parte motion for an order authorizing the return of all "Confidential" and "Confidential - Attorney Eyes Only" Material by the Court to the party that produced the information or the destruction thereof.

18. This Stipulation shall, subject to Court approval, be binding upon the Parties upon their signature hereto, and by signing hereto each Party agrees to comply with the terms of this Stipulation and to be bound thereby. The Court may modify the terms and conditions of the Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings. In the event that the Court does not enter into the Proposed Protective Order based upon this Stipulation, the Parties shall in good faith negotiate any terms that the Court finds objectionable.

19. This Order is entered solely for the purpose of facilitating the exchange of documents and information between the Parties to this action without involving the Court unnecessarily in the process. Nothing in this Order nor the production of any information or document under the terms of this Order nor any proceedings pursuant to this Order shall be deemed to have the effect of an admission or waiver by any Party or of altering the confidentiality or nonconfidentiality of any such document or information or altering any existing obligation of any Party or the absence thereof.

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20. Without separate Court order, this Proposed Protective Order and the parties' stipulation does not change, amend, or circumvent any court rule or local rule.

SO STIPULATED

Dated: May 24, 2010

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EXHIBIT A

NONDISCLOSURE AGREEMENT

I, ____________________________ do solemnly swear that I am fully familiar with the terms of the Stipulated Amended Protective Order entered in *Morse v. Marie Callender Pie Shop, Inc. et al.*, United States District Court for the Southern District of California, Case No. 09-CV-1305 JLS POR, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

DATED: __________________________

____
Signature

EXHIBIT B

DEFENDANTS' COMPETITORS

1. Big Boy
2. Ruby Tuesday
3. Red Lobster
4. Olive Garden
5. Elephant Bar
6. Claim Jumper
7. Chili's
8. BJ's
9. Mimi's
10. Coco's
11. Island's
12. TGIFridays
13. California Pizza Kitchen
14. King's Fish House
15. Tony Roma's
16. Acapulco
17. El Torito
18. Hooter's
19. Dennys
20. IHOP
21. Cracker Barrel
22. Shoneys
23. Bob Evans

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2010, the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send notification of such filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Kyle Nordrehaug Norman B. Blumenthal Aparajit Bhowmik Blumenthal, Nordrehaug & Bhowmik 2255 Calle Clara La Jolla, CA 92037	kyle@bamlawlj.com norm@bamlawlj.com aj@bamlawlj.com *Attorneys for Plaintiff JAMIE MORSE*
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I further certify that copies of the foregoing were sent on May 24, 2010, via U.S. Mail to the following parties not registered on the CM/ECF:

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